THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

WRIT PETITION No. 4393 of 1996

DATED: 22 .03.2006

Between:

V.Ramachandra Rao and another.

… PETITIONER

AND

M.R.O., Secunderabad and others.

… RESPONDENTS

ORDER:

This Writ Petition was originally filed by the 1st petitioner by name, V.Ramachandra Rao. He died during the pendency of the Writ Petition and his legal representative i.e., 2nd petitioner was brought on record. The 3rd respondent was impleaded, at a later point of time.

It is stated that the 1st petitioner and three others purchased an extent of about Ac.4.00 of land in Survey Nos.20 to 26 of Lalaguda Village, Secunderabad, under registered sale deeds, dated 18.09.1967 and 27.09.1967. Subsequently,

on 31.07.1979, an agreement of sale is said to have been executed in favour of one Subbarayappa. It is alleged that the said agreement was cancelled, on account of non-compliance with the conditions by Subbarayappa.

The 1st petitioner filed O.S.No.131 of 1980, in the Court of Principal District Munsif, East Taluq, Hyderabad, against Subbarayappa, and obtained a decree for perpetual injunction on 25.03.1983. Son of Subbarayappa, in turn, is said to have filed O.S.No.3021 of 1980 in one of the Courts of Assistant Judges, City Civil Court, Hyderabad, against the 1st petitioner. The suit is said to have been dismissed. O.S.No.1781 of 1983 was filed by the 3rd respondent herein, daughter-in-law of Sri Subbarayappa, in the Court of XI Assistant Judge, Secunderabad, against the 1st petitioner, in respect of the same land. The suit was decreed *ex parte*. Thereupon, the 1st petitioner filed A.S.No.5 of 1990 in the Court of the Additional Chief Judge, City Civil Court, Hyderabad, and the appeal was allowed, remanding the matter, to the trial Court, for fresh disposal. Certain conditions were imposed.

It is stated that while the proceedings were pending in various civil courts in respect of the said land, at the instance of local police and revenue authorities, proceedings were initiated, under Section 145 Cr.P.C. In this writ petition, a writ of Mandamus is sought for by the petitioners, directing the 1st respondent, Mandal Revenue Officer, Secunderabad, to deliver the vacant possession of the land to them.

On behalf of respondents 1 and 2, initially a counter affidavit is filed on 07.12.2005. It was pleaded that A.S.No.5 of 1990 filed by the 1st petitioner was dismissed, since he did not comply with the condition and in that view of the matter, the decree passed in O.S.No.1781 of 1993 remains in force. By making reference to W.P.No.25683 of 2003, the respondents stated that the relief claimed by the petitioners cannot be granted.

During the course of hearing, the learned counsel for the petitioners placed

before this Court, the copies of the orders, which are to the effect that the condition imposed in A.S.No.5 of 1990, was complied with, at a later stage, and subsequently, O.S.No.1781 of 1983 itself was dismissed. On noticing this, the 1st respondent filed an additional counter affidavit, stating that once it has emerged that the 3rd respondent does not have any order or decree in her favour, the matter needs to be re-considered.

In her counter affidavit, the 3rd respondent stated that on verification, she came to know that O.S.No.1781 of 1993 filed by her was dismissed for default on 28.02.1997.

Heard the learned counsel for the petitioners, the learned Government Pleader for Revenue and the learned counsel for the 3rd respondent.

The only question that arises for consideration in this writ petition is as to whether the proceedings initiated by the revenue and police officials under Section 145 Cr.P.C., in respect of the land, referred to above, can be permitted to continue. The fact that the proceedings under Section 145 Cr.P.C. were initiated and the possession and control over the land was taken over, in pursuance of the said proceedings, is not in dispute. It is permissible to initiate proceedings under Section 145 Cr.P.C., if only the dispute is not subject matter of any civil suits. If the civil suits are already pending, such proceedings cannot, be initiated, at all. On the other hand, if the civil suits are filed subsequent to initiation of proceedings under Section 145 Cr.P.C., the latter have to be closed, leaving the entire matter to be adjudicated in the civil proceedings. In the instant case, the proceedings under Section 145 Cr.P.C. were initiated, even while civil suits were pending. Whatever may have been the justification in initiating such proceedings, once the 1st petitioner was granted a decree for perpetual injunction against the ancestors of the 3rd respondent and the suit filed by the latter was dismissed, there does not exist any justification for continuance of the same.

Certain directions were, no doubt, issued by this Court in W.P.No.25683 of 2003 in favour of the 3rd respondent, believing her representation that there exists a decree in her favour. The petitioners were not arrayed as parties to the said writ petition. It is represented that the land, which is now under the control and possession of the 1st respondent, has been encroached by third parties.

Once it has emerged that the rights of the petitioners are traceable to sale deeds, there exists a decree for perpetual injunction in their favour and the vacant possession of the land was taken over by the 1st respondent, in exercise of power under Section 145 Cr.P.C., he would be under obligation to restore the same to the petitioners, if necessary, by removing the encroachments. Having dispossessed the petitioners, the 1st respondent cannot plead that the land has been encroached. The 3rd respondent did not put forward any claim vis-à-vis the land.

For the foregoing reasons, the Writ Petition is allowed and respondents 1 and 2 are directed to restore the possession of the land to the petitioners, within three (3) months, by removing the encroachments, if any. It is made clear that if respondents 1 and 2 find it difficult to remove the encroachments, they shall be under obligation to pay the market value to the petitioners. There shall be no order as to costs.

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(L.NARASIMHA REDDY,J)

Date: 22.03.2006

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